Appendix E

Comparison of Alleged Nondisclosures with Actual Disclosures

Alleged Deceptive Act	Google Disclosure
Google "surreptitiously experimented with RPO" in 2014, before launching it with "no disclosure." RPO "increase[d] reserve prices in AdX auctions on a per buyer basis if buyers have submitted bids with large discount[s], that is, a big difference between bid and clearing price." Resp. at 5-9.	In 2014, Google *did disclose* it would run experiments that may include "modifying the min CPM set by the publisher for an impression." SOF ¶ 220; MSJ Ex. 42. It is *undisputed* that "modifying the min CPM set by the publisher" means modifying the reserve price. RSOF ¶ 220. On May 12, 2016, Google *disclosed in detail* the RPO program: "[W]e've been experimenting with optimized pricing to *help publishers set price floors* in the Open Auction that more closely reflect the value of their inventory. The Open Auction tends to have a large price gap between what a buyer bids and what they pay. … Optimized pricing in the Open Auction *uses historical data to automate the post-auction analysis and updating of floor prices* that publishers already do, and takes it a step further. Not only does our technology use signals like ad unit and device, it also calculates audience-based floors, so publishers can fully benefit from building valuable audiences. And as we've always done, if there is a floor applied to an impression, whether publisher or *algorithmically set*, we share it with buyers in our bid requests." MSJ Ex. 46.
DRSv1 was "secretly launched … in August 2015," and "discounted Google's otherwise static share of revenue on AdX to ensure that auction which would not have otherwise cleared on AdX did." Resp. at 10	Google *did disclose* that: "The Ad Exchange auction closing price is determined as the greater of the second-highest net bid in the Ad Exchange auction or the reserve price applied to that impression. In some cases, *the auction may close at a price lower than the reserve price applied*, due to auction optimizations. Sellers are paid the Ad Exchange closing price, net of Google's revenue share, but will receive, subject to the terms governing their use of Ad Exchange, no less than the min CPM applied to the

Appendix E

	auction." Ex. 43 (8/5/15 Help Center Article); *see also* Ex. 18 (Weinberg Depo. Tr.) 202-11:203:15 ("In the event that the auction closes at a price lower than the reserve applied and sellers are paid at least their min CPM, I agree that can only happen by adjusting Google's revenue share.").
"Like DRSv1, DRSv2 discounted Google's revenue share at times to help clear transactions on AdX that otherwise would not have cleared. But with DRSv2, Google also tracked the debts that certain advertisers … purportedly owed Google because their winning bid was below the reserve price that Google had discounted." Resp. at 11	Google *explicitly disclosed* that benefits from DRSv1 would be "offset" under DRSv2, and that it would either "increase or decrease" its revenue share on a given auction while maintaining the contracted revenue share as the month-wide average, unless publishers opted out. "To optimize the auction, Google may choose to close an auction at a price lower than the reserve price that would have otherwise been applied. In such cases, the winning buyer may pay a price below the reserve and therefore receive a discount on its bid. *A buyer that has received discount(s) on its bid(s) may face higher reserve prices in subsequent transactions to offset such discount(s)*." MSJ Ex 44 (June 2016 Help Center Article). "Unless the 'per-query revenue share' setting is enabled by a Seller, auction optimizations may result in an auction closing at a price lower than the reserve price that would have otherwise been applied. Because the Seller will always be paid at least its specified min CPM, the Seller may receive more than its contracted revenue share on the transaction. *In subsequent transactions, the Seller's revenue share may then be reduced to offset the prior earnings in excess of the contracted revenue share*, but the Seller will always receive at least its contracted revenue share across all its Ad Exchange transactions in a given month." *Id.*

Appendix E

	"As part of our ongoing efforts to provide smarter optimizations and maximize revenue, we may **increase or decrease revenue share per query**. … Your contracted revenue share over a billing period will not change." MSJ Ex. 40 at -779 (6/13/16 Release Note).
"Bernanke manipulated bids that Google submitted into its own auctions," and Google **"fail[ed] to disclose Bernanke to its publisher clients."** Resp. at 50, 53.	SOF ¶¶109-149; MSJ at 46-48 (evidence shows undisputed facts that: (i) Google Ads submitted two bids to the AdX auction but **the AdX auction remained a second price auction** and (ii) States admit Bernanke was **not deceptive** when the auction switched to a first-price format) and *citing* Ex's 3; 4; 6; 8; 11; 12; 15; 16; 18; 20; 24; 37; 57; 80; 83; 87; 93; 106; 107; 124; 137; 140; 151; 152; 165; and, 266 Google explicitly disclosed that AdX could and would adjust bids: Google's "Ad Exchange determines the winning bidder based on the highest **net bid** submitted. Such net bid reflects any **adjustments Ad Exchange may, at its discretion, have made to the bid submitted by the buyer** for the purpose of optimizing the auction." MSJ Ex. 44 (Aug. 2014 Help Center article).